IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

S.T.Rev.No.156 of 2007

T.A.NO.718/1995 OF KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, ERNAKULAM (ORDER DATED 12.02.2001).

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REVISION PETITIONER/APPELLANT/ASSESSEE:-

M/S.MARE STEEL CASTINGS (P) LTD.,
KALAMASSERY,
ERNAKULAM.

BY ADV. DR.K.B.MOHAMMEDKUTTY (SR.)
& SRI.K.M.FIROZ

RESPONDENT/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,
SECRETARIAT,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 30/10/2007, ALONG WITH S.T.REV.NOS.171 OF 2007 & 232 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.R.Nos.156 of 2007, 171 of 2007 & 232 of 2007

Dated this the 30th day of October, 2007.

O R D E R

H.L.Dattu, C.J.

The first two revision petitions are under the provisions of the Kerala General Sales Tax Act (Act for short) and S.T.Rev.No.232 of 2007 pertains to the assessment made under the provisions of the Central Sales Tax Act (CST Act for short).

(2). These revision petitions pertain to the assessment years 1989-90 and 1990-91.

(3). The assessee is before us in these revision petitions, being aggrieved by a common order passed by the Kerala Sales Tax Appellate Tribunal (Tribunal for short) in T.A.Nos.718/1995, 719/1995 and 721/1995.

(4). Since the assessee is common in all these revision petitions, they are clubbed, heard and disposed of by this common order at the admission stage itself.

(5). The one and the only question that would arise for our consideration is, whether the assessing authority is justified in levying tax on the steel iron castings, out of which a product has been manufactured by the assessee, at the rate of 8 percent, instead of 4 percent as prescribed under the Second Schedule to the Act.

(6). The factual matrix in brief is as under:-

The first appellate authority, in the appeals filed by the assessee against the re-assessment order passed has stated in its order as under:

> "The appellant is engaged in the manufacture and sale of cast iron castings, such as Jaw plate for crusher, tooth points for earth moving machinery, Hydrolic cylinder for rubber moulding machinery and throttle valve body, crane wheel, turbine part etc. It is further stated that the main supply is to industries producing heavy machineries. Their product is cast iron castings from cast iron.".

(7). Even the Tribunal in the appeal filed by the assessee against the orders passed by the first appellate authority, while referring to the nature of the activity of the assessee has stated, that, the assessee is the manufacturer of cast iron finished products used in various industries. There is also a finding by the Tribunal in its order that it is not disputed that the assessee is manufacturing finished goods from cast iron.

(8). The assessee has not produced before us any material to demonstrate that the assesee deals only in steel castings. In fact, we requested Dr.Muhamedkutty, learned senior counsel appearing for the assessee, at least to produce before us the sales invoices to find out whether what is sold by the assessee is mere steel castings or a product manufactured out of steel iron castings. Learned senior counsel would inform us, that because of long length of time from the date of assessment and the orders passed by the Tribunal, the assessee is not in a position to produce any sales

invoices before this Court. Therefore, we have no other alternative, but to accept the facts as narrated by the first appellate authority as well as by the Tribunal.

(9). The assessing authority originally had completed the assessment for the assessment years 1989-90 and 1990-91 treating the goods sold by the assessee as steel castings and the rate of tax applicable at 4 percent. Thereafter, had initiated proceedings under Section 19 of the Act to pass a re-assessment order treating the transaction of the petitioner as a manufacturing activity by manufacturing product out of steel castings. A proposition notice has been issued to the assessee. The proposal so made in the re-assessment notice was not replied by the assessee. Therefore, the assessing authority has passed assessment orders treating the sale made by the assessee as an item falling under the First Schedule to the Kerala General Sales Tax Act and the rate of tax applicable is under Entry 119 of the First Schedule to the Act. The orders passed by the assessing authority is confirmed by the first appellate authority as well as by the Tribunal. In fact, the assessee had filed an application for rectification before the Tribunal. Even that application is rejected by the Tribunal.

(10). Before we advert to the factual situation, we intend to notice the Entries, both under the First and Second Schedule to the Kerala General Sales Tax Act. Entry 119 of the First Schedule to the Act speaks of all metallic products or articles made of iron or steel in combination with

other metals other than those specified elsewhere in the Schedule or in the Second Schedule. The point of levy is at the first point of sale in the State by a dealer who is liable to tax under Section 5 of the Act. The rate of tax is prescribed at 8 percent.

(11). Entry 3 (ii) of the Second Schedule to the Kerala General Sales Tax Act speaks of iron and steel, that is to say pig iron etc. For the purpose of the present case, we need to notice only Entry 3(ii) (h) of the Second Schedule to the Act. The entry speaks of discs, rings, forgings and steel castings. The point of levy is at the point of first sale in the State by a dealer who is liable to tax under Section 5 of the Act. The rate of tax is at 4 per cent.

(12). If the sale by a dealer in the state is merely discs, rings, forgings and steel castings, then the said transaction would definitely fall under the Second Schedule to the Kerala General Sales Tax Act. The rate of tax could only be at 4 percent. However, if the articles are made out of iron or steel in combination with other metals, then the sale of such products fall under the First Schedule to the Act. The point of levy would be at the point of first sale in the State. The rate of tax would be 8 percent.

(13). Now, the question that falls for our consideration and decision is, whether the assessee merely effects sale of the steel castings within the State or he manufactures any other product and then effects sale in the State. If we come to the conclusion that what is sold by the assessee is

merely steel castings, then it would fall under Entry 3 (ii) (h) of the Second Schedule to the Act, and, if for any reason we come to the conclusion that the assessee manufactures articles out of steel castings in combination with other metals then it would certainly fall under Entry 119 of the First Schedule to the Act and the rate of tax applicable would be at 8 percent.

(14). In the re-assessment order passed, the assessing authority has not noticed in detail the nature of the activity of the assessee. He has only stated that in the original assessment proceedings, the tax was levied on the taxable turnover of the dealer at 4 percent and that requires to be rectified by revising the assessment order and bringing to tax the taxable turnover of the dealer at 8 percent. However, in the orders passed by the first appellate authority, there is a clear indication that the assessee is engaged in the manufacture and sale of cast iron and castings such as Jaw plate for crusher, tooth points for earth moving machinery, Hydrolic cylinder for rubber moulding machinery and throttle valve body, crane wheel, turbine part etc and those products are sold to industries manufacturing heavy machineries. That only means what is sold by the petitioner is not mere steel castings, but a product of the steel castings manufactured in combination with other metals. The factual finding of the first appellate authority was not disturbed by the Tribunal. In fact, the Tribunal proceeds that the assessee is a manufacturer of cast iron and finished products used in various industries. There is also an indication in the order that the assessee has not disputed that the assessee is

manufacturing finished goods from cast iron/steel castings.

(15). Dr.Mohamedkutty, learned senior counsel appearing for the assessee vehemently would contend, that the assessing authority in its re-assessment order has stated that the petitioner effects sale of steel castings and therefore, the first appellate authority and the Tribunal could not have come to the conclusion that the assessee manufactures a product out of steel castings. In our opinion, this submission of the learned counsel cannot be accepted. The first appellate authority and the Tribunal are also the fact finding authorities. Before the first appellate authority and the Tribunal the entire assessment records were available and with the assistance of those records the first appellate authority and the Tribunal have come to the conclusion that the assessee is engaged in the manufacture and sale of cast iron castings such as Jaw plate etc. That finding of fact cannot be disturbed by this Court.

(16). Dr.Mohamedkutty, learned senior counsel also relies upon the decisions rendered by this Court in S.T.Rev.Nos.142 and 184 of 2004 dated 24th August, 2006 to contend that this Court has held that the product sold by the petitioner is only steel castings and had come to the conclusion that levy of tax could only be at the rate of 4 percent under item 2 (ii) (h) of the Second Schedule to the Kerala General Sales Tax Act, and therefore, the Tribunal was not justified in passing an order contrary to the observations made by this Court. In our opinion, even this submission of the learned

counsel cannot be accepted. It is now well settled that each assessment year is separate year. The assessment would depend upon the facts of the case. For the assessment year that was before this Court in S.T.Rev.Nos142 and 184 of 2004, this Court after going through certain brochures produced has come to the conclusion that :

> *"The question is whether there is substantial addition after the casting work, so that the product becomes commercially different. The department has no case that the petitioner has done any such major improvement on the steel casting and the receipts analysed in the assessment does not disclose it. However, if substantial improvement is done on steel casting, then probably it becomes iron and steel product and can be called a metallic product only when modifications including addition of other metals are done to the product. In such circumstances, we find the product sold by the petitioner is only steel casting and therefore, we reverse the order of the Tribunal and direct assessment of the product under item No.2 (ii) (h) of the Second Schedule to the KGST Act."*

(17). As we have already stated, with the available materials on record, the Court had come to the conclusion that what was sold by the petitioner is mere steel castings and not an article or a product manufactured out of steel castings.

(18). In the instant case, as we have already stated, the first appellate authority and the Tribunal in too many places have observed that the assessee is engaged in the manufacture and sale of cast iron castings such as

jaw plate for crusher, tooth points for earth moving machinery, Hydrolic cylinder etc. That only means what is sold by the petitioner is not mere steel castings but a product of the steel castings with other metals. Therefore, in our opinion, the first appellate authority as well as the Tribunal were justified in confirming the orders of re-assessment passed by the assessing authority for the assessment years in question.

(19). In view of the above discussion, in our view, the revision petitions filed by the petitioner fails. Accordingly the revision petitions require to be rejected and they are rejected.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS/DK.